

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

JANE DOE,

Plaintiff,

v.

ANONYMOUS INC., and JOHN DOE,  
individually and in his official capacity,

Defendants.

Case No. \_\_\_\_\_

**MEMO OF LAW IN SUPPORT OF MOTION TO SEAL REMOVAL PLEADINGS FOR  
THE LIMITED PURPOSE OF COMPLYING WITH STATE-COURT RULING**

On October 17, 2018, Plaintiff Jane Doe filed a Summons with Notice against Defendants Anonymous Inc. and John Doe captioned *JANE DOE v. ANONYMOUS INC., and JOHN DOE, individually and in his official capacity*, Index No. 159601/2018, in the Supreme Court of the State of New York, County of New York. *See* Exhibit A (Summons with Notice).

Also, on October 17, 2018, Plaintiff filed a motion for an order sealing all pleadings, papers, affidavits, exhibits, judgments, orders, decisions, and transcripts in *JANE DOE v. ANONYMOUS INC., and JOHN DOE, individually and in his official capacity*, Index No. 159601/2018, in the Supreme Court of the State of New York, County of New York, along with an affirmation from her attorney in support. The Supreme Court of the State of New York, County of New York, set a hearing on the motion for November 26, 2018 and directed the clerk of the court “to restrict access to the entire file ... except as to the parties, their respective counsel, and authorized court personnel” pending the hearing on the motion. *See* Exhibit B (Plaintiff’s motion to seal, Plaintiff’s attorney’s affirmation in support, and court ruling on the motion).

Defendants have now removed this case from state court to federal court on the grounds of diversity jurisdiction under 28 U.S.C. § 1332(a)(1). Since Defendants have removed this case to federal court, the appropriate procedure is for Plaintiff to now file a motion to seal in federal court under federal standards and for Defendants to file a response to that motion. All state court proceedings are halted. *See* 28 U.S.C. § 1446(d) (“Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, which shall effect the removal and *the State court shall proceed no further* unless and until the case is remanded.”) (emphasis added).

In an abundance of caution, however, and pursuant to Fed. R. Civ. P. 5.2(a), Defendants request that this Court seal Defendants’ Notice of Removal and the exhibits thereto for the limited purpose of complying with the state-court ruling on Plaintiff’s state-court motion to seal the entire case.

To be clear, Defendants do not take a position on Plaintiff’s request to seal the entire case. If Plaintiff files a motion to seal the entire case in federal court under federal standards, Defendants will not oppose that motion or join in that motion.

Dated: November 21, 2018

Respectfully submitted,



\_\_\_\_\_  
Anjanette Cabrera

Stephen Stecker

Constangy, Brooks, Smith & Prophete LLP

620 Eighth Avenue, 38th Floor

New York, New York 10018

Phone: 646.341.6536

Email: [acabrera@constangy.com](mailto:acabrera@constangy.com)

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I, Anjanette Cabrera, certify that a true and correct copy of the foregoing **MEMO OF LAW IN SUPPORT OF MOTION TO SEAL REMOVAL PLEADINGS FOR THE LIMITED PURPOSE OF COMPLYING WITH STATE-COURT RULING** was served on November 21, 2018, by email and overnight mail to the following address:

Mark D. Shirian  
Mark David Shirian P.C.  
228 East 45th Street, Suite 1700B  
New York, New York 10017  
mshirian@shirianpc.com  
**ATTORNEY FOR PLAINTIFF**

  
\_\_\_\_\_  
Anjanette Cabrera

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JANE DOE,

Plaintiff,

-against-

ANONYMOUS INC., and JOHN DOE,  
individually and in his official capacity,

Defendants.  
-----X

**SUMMONS WITH NOTICE**

Index No.: 159601/2018  
Date Purchased: 10/17/2018

Plaintiff designates New York  
County as the place of trial.

The basis of venue is  
Plaintiff's Residence

**To the Persons Named as Defendants Above:**

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to appear in this action by serving a notice of appearance on the Plaintiff's attorney at the address set forth below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after completion of service where service is complete if the summons is not delivered personally to you within the State of New York.

**YOU ARE HEREBY NOTIFIED THAT** should you fail to answer or appear a judgment will be entered against you by default for the relief demanded below.

Dated: New York, New York  
October 16, 2018



\_\_\_\_\_  
**MARK DAVID SHIRIAN P.C.**

**By: Mark D. Shirian, Esq.**  
Attorneys for Plaintiff

**JANE DOE**  
228 East 45<sup>th</sup> Street, Suite 1700B  
New York, New York 10017  
(516) 417-0201

ANONYMOUS INC., *Via Counsel for Defendant*, Costangy Brooks, Smith & Prophete LLP, 620 Eighth Avenue, 38<sup>th</sup> Floor, New York, NY 10018

JOHN DOE, *Via Counsel for Defendant*, Costangy Brooks, Smith & Prophete LLP, 620 Eighth Avenue, 38<sup>th</sup> Floor, New York, NY 10018

**Notice:** The nature of this action is: Quid pro quo sexual harassment, hostile work environment, retaliation, and wrongful termination under N.Y.C. Admin. Code § 8-107 *et al.*

The relief sought is compensatory and non-compensatory damages in excess of the monetary jurisdiction of all lower courts for the Plaintiff, an individual residing in New York County, City and State of New York.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No.: 159601/2018

JANE DOE,

Plaintiff,

-against-

ANONYMOUS INC., and JOHN DOE, individually  
and in his official capacity,

Defendants.

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***Summons with Notice***

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**MARK DAVID SHIRIAN P.C.**  
Attorneys for Plaintiff – JANE DOE  
Office & P.O. Address  
228 East 45<sup>th</sup> Street, Suite 1700B  
New York, New York 10017  
(516) 417-0201

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TO:

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Service of a copy of the within is hereby admitted.  
Dated: \_\_\_\_\_

\_\_\_\_\_  
Attorney(s) for

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**CERTIFICATION**

I hereby certify that, to the best of my knowledge, information and belief, the presentation of *Summons with Notice* and the contentions therein are not frivolous as defined in Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Dated: October 16, 2018  
New York, New York

/M. Shirian

Mark D. Shirian  
MARK DAVID SHIRIAN P.C.  
Attorneys for Plaintiff  
As Designated Above

# EXHIBIT B

At an IAS Part, Room \_\_\_\_\_, of  
the Supreme Court of the State of  
New York, County of New York,  
held at the Courthouse located at 60  
Centre Street, New York, New  
York on the 17 of Oct. 2018

Present: Hon. \_\_\_\_\_  
Justice of the Supreme Court

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

JANE DOE,

Plaintiff(s),

Index no. \_\_\_\_\_

-against-

ANONYMOUS INC., and JOHN DOE, individually  
and in his official capacity,  
Defendant(s),

ORDER TO SHOW CAUSE

MS#

Upon reading the Summons with Notice in this action, dated October 16, 20 18; the  
Affidavit of Mark D. Shirián, Esq., dated October 16, 2018; memorandum  
of law in support of their motion to assign an index number to this matter with the above caption and to  
limit access to the papers and proceedings to the parties and their respective counsel,

Let the { Defendants or their counsel } SHOW CAUSE at an IAS Part 17,  
Room 335 of this Court, to be held at the Courthouse located at 60 Centre Street, New York, NY on  
the 26 day of NOV, 20 18 at 10:00 am/pm or as soon thereafter as  
counsel can be heard, why an Order should not be made directing,

- That the pleadings, papers, affidavits, exhibits, and evidence filed with this Court in the  
above-titled matter; the judgments, orders and decision of this Court in the above-entitled  
matter; and the transcripts of hearing held in the above-captioned matter be SEALED; and
- That any of the aforesaid pleadings, papers, affidavits, exhibits, evidence, judgments, orders,  
decisions and transcripts of hearings filed with this Court in this action be kept in the custody



of the Clerk of this County or the County Clerk at the County Courthouse for the County of New York; and

- c) That the Clerk of this Court and the County Clerk not permit any person other than a party or his counsel to appear herein to copy, examine, or peruse the aforesaid pleadings, papers, affirmations, exhibits, evidence, judgments, orders, decisions, and transcripts of hearings; and
- d) That the County Clerk enter the caption of the above-entitled proceeding in the current minute books and indices of actions and proceedings maintained in his office under the title of JANE DOE vs. *ANONYMOUS* INC., et al, and it is

ORDERED that, pending the hearing of this motion BEFORE THE JUSTICE TO BE ASSIGNED, the Clerk of this Court, upon payment of the proper fees, be and is hereby directed to assign an index number to this proceeding, and to accept for filing a Request for Judicial Intervention ("RJ"), bearing the following caption, namely:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

JANE DOE,

Plaintiff(s),

-against-

*ANONYMOUS* INC., and JOHN DOE,  
individually and in his official capacity,

Defendant(s),

and it is further

ORDERED that, pending the hearing of this motion BEFORE THE JUSTICE TO BE ASSIGNED, the Clerk of the Court is directed to restrict access to the entire file under the above caption and index number to the parties, their respective counsel and authorized court personnel; and it is further

FILED  
Hon. Judith N. McManis  
J.S.C.

Hon. Judith N. McManis  
J.S.C.

over the rail

ORDERED that ~~personal~~ service of a copy of this Order to Show Cause together with the papers upon which it is based and the Summons and Complaint be served upon Counsel for Defendants, Costanzo Brooks, Smith & Prophete LLP, 620 Eighth Avenue, 38th Floor, New York, NY 10018, on or before 31<sup>st</sup> day of OCT, 2018.

Oral Argument  
Directed

JSC

Index No. 159601/2018

ENTER:

  
Justice of the Supreme Court

Hon. Judith N. McMahon  
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JANE DOE,

Plaintiff,

Index No.:

-against-

**AFFIRMATION IN  
SUPPORT**

ANONYMOUS INC., and JOHN DOE, individually  
and in his official capacity,

Defendants.  
-----X

Mark D. Shirian, an attorney duly admitted to practice law before the Courts of the State of New York, duly affirms the following under penalties of perjury:

1. I am a member of the law firm Mark David Shirian P.C., attorneys for Plaintiff, JANE DOE, herein and as such I am fully familiar with the facts set forth below based upon personal knowledge and based upon my review of related documents in this case.

2. I respectfully submit this Affirmation in Support for an Order directing that:

- A. The pleadings, papers, affidavits, exhibits, and evidence filed with this Court in the above-titled matter, the judgements, orders and decision of this Court in the above-entitled matter; and the transcripts of hearing held in the above-captioned matter be SEALED; and
- B. That any of the aforesaid pleadings, papers, affidavits, exhibits, evidence, judgments, orders, decisions and transcripts of hearings filed with this Court in this action be kept in the custody of the Clerk of this County or the County Clerk of this County or the County Clerk at the County Courthouse for the County of New York; and
- C. That the Clerk of this Court and the County Clerk not permit any person than a party or his or her counsel to appear herein to copy, examine, or peruse the

aforesaid pleadings, papers, affirmations, exhibits, evidence, judgments, orders, decisions, and transcripts of hearings; and

- D. That the County Clerk enter the caption of the above-entitled proceeding in the current minute books and indices of actions and proceedings maintained in his office under the title of JANE DOE v. ANONYMOUS INC., et al.; and
- E. Granting such other, further and sufficient relief as the Court deems just and proper.

### **FACTUAL BACKGROUND**

3. The instant action is a quid pro sexual harassment claim arising from Jane Doe's employment with Anonymous Inc. and John Doe. Specifically, Plaintiff brings this action for quid pro quo sexual harassment, hostile work environment, retaliation, and wrongful termination under N.Y.C. Admin. Code § 8-107 *et al.* Annexed hereto as Exhibit A is a copy of the summons with notice of this action.

4. Jane Doe, the name being fictitious, is a female who resides in the County of New York, City and State of New York.

5. Anonymous Inc., the entire name being fictitious, is a financial advisory firm based in New Jersey with offices in New York City, Switzerland and Boston. The firm provides comprehensive wealth management, tax strategies, investment planning, and institutional services to high net worth and affluent individuals and families worldwide.

6. John Doe, the name being fictitious, is a male who was and currently is the CEO and Founder of Anonymous Inc.

7. John Doe presently resides in the State of New Jersey with his wife and children.

8. Jane Doe was hired by Anonymous Inc. as a Director on or around September 2013.

9. During the course of her employment with Anonymous, Jane Doe was subjected to unwanted sexual physical and verbal advances by John Doe.

10. Despite rejecting such advances, Jane Doe and John Doe started a romantic relationship.

11. In or around November 2014, Jane Doe informed John Doe that she could no longer continue with the romantic relationship.

12. As a result, John Doe informed Jane Doe that he would be unable to pay her anymore as her role as a Director because of the termination of the romantic relationship.

13. Jane Doe continued to work for Anonymous Inc. and continued to have access to her business email address, and confidential personnel files and reports of Anonymous Inc., with the approval and knowledge of John Doe.

14. However, John Doe did not pay Jane Doe for her work and failed to promote Jane Doe to her original role as Director.

15. A few months later, Jane Doe began working for a California based company, Lateral Investment Management, which upon information and belief, John Doe is and was a senior advisor of.

16. Jane Doe continued to work for Anonymous Inc. in the hopes of obtaining a work visa through Anonymous Inc., despite not receiving compensation for her work.

17. Anonymous Inc. and John Doe's failure to compensate and promote Jane Doe after she declined to continue a romantic relationship with John Doe demonstrates a continuous practice and/or policy of discrimination.

18. Jane Doe continued to work for Anonymous Inc. through November 2015, when she constructively discharged herself from employment in light of the fact that she was not

receiving compensation and did not get a promotion since ending the romantic relationship with John Doe.

19. However, Jane Doe continued to use her business "Anonymous Inc." email address and still held herself out to be affiliated with Anonymous Inc. with the consent of John Doe through 2016.

20. As a result of the quid pro quo harassment by John Doe, Jane Doe was caused severe emotional distress and loss of past and future income.

21. In light of the sensitive nature of this action, Jane Doe respectfully requests for this matter to continue under the anonymous caption of Jane Doe v. Anonymous Inc., *et al.*

### **LEGAL ARGUMENT**

#### **Good Cause Exists To Continue This Action Under Pseudonyms**

22. Under 22 NYCRR 216.1, all documents and records filed with the court are "court records," and, presumptively, open to the public. Notwithstanding, 22 NYCRR 216.1 (a) provides that:

Except where otherwise provided by statute or rule, a court shall not enter an order in any action or proceeding sealing the court records, whether in whole or in part, except upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties. Where it appears necessary or desirable, the court may prescribe appropriate notice and opportunity to be heard. (Emphasis added.)

*Id.*

23. With respect to the public's interest, under the First and Sixth Amendments, as applied to the states by the Fourteenth Amendment, the public, as well as the press, is generally entitled to have access to court proceedings (Danco Labs. v. Chemical Works of Gedeon Richter, 274 A.D.2d 1 [2000], *supra*).

24. Among the values of access in civil cases is that "the bright light cast upon the judicial process by public observation diminishes the possibilities for injustice, incompetence, perjury, and fraud" (*id.* at 7). Furthermore, the very openness of the process should provide the public "with a more complete understanding of the judicial system and a better perception of its fairness" and serves to "ensure that [the proceedings] are conducted efficiently, honestly and fairly" (*id.*). Publicity about trials "tend[s] to insure that the truth will be told and the secrecy of inquisition-like proceedings will not occur" (*id.*, quoting Coopersmith v Gold, 156 Misc.2d 594, 601 [1992]; *see*, Matter of Westchester Rockland Newspapers v Leggett, 48 N.Y.2d 430, 437-438 [1979]). The public interest in openness is particularly important on matters of public concern, even if the issues arise in the context of a private dispute (Danco Labs., *supra* at 7), about which secrecy, then, may well prove the greater detriment to the public (*see generally*, Doggett and Mucchetti, *Public Access to Public Courts: Discouraging Secrecy in the Public Interest*, 69 Tex L Rev 643, 648 [1991]).

25. In Doe v. New York Univ., 786 N.Y.S.2d 892 (N.Y. Gen. Term 2004), the court held that plaintiffs should be permitted to file an amended complaint to replace their names with pseudonyms, and plaintiffs' application for an order sealing records was denied. Although the plaintiffs did not demonstrate good cause to seal the entire record, they did demonstrate good cause to proceed anonymously, which "is not the equivalent of sealing records and does not prevent the public from accessing records." There, "the ultimate inquiry must be whether 'the plaintiff has a substantial privacy right which outweighs the 'customary and constitutionally-embedded presumption of openness in judicial proceedings,'" e.g. where a substantial privacy interest is involved. Because the plaintiffs were victims of sexual assault, suffered emotional distress,

underwent psychotherapy, etc., the use of pseudonyms would “avoid any sensational publicity associated with the widely recognized university, NYU.”

26. In the case at bar, it is clear that the allegations are sensitive and sexual in nature. Additionally, Plaintiff suffered extreme emotional distress and the use of pseudonyms would avoid any sensational publicity.

27. Accordingly, your affiant respectfully requests this Court to issue an Order that: The pleadings, papers, affidavits, exhibits, and evidence filed with this Court in the above-titled matter, the judgements, orders and decision of this Court in the above-entitled matter; and the transcripts of hearing held in the above-captioned matter be SEALED; and That any of the aforesaid pleadings, papers, affidavits, exhibits, evidence, judgments, orders, decisions and transcripts of hearings filed with this Court in this action be kept in the custody of the Clerk of this County or the County Clerk of this County or the County Clerk at the County Courthouse for the County of New York; and That the Clerk of this Court and the County Clerk not permit any person than a party or his or her counsel to appear herein to copy, examine, or peruse the aforesaid pleadings, papers, affirmations, exhibits, evidence, judgments, orders, decisions, and transcripts of hearings; and That the County Clerk enter the caption of the above-entitled proceeding in the current minute books and indices of actions and proceedings maintained in his office under the title of JANE DOE v. ANONYMOUS INC., et al.; and Granting such other, further and sufficient relief as the Court deems just and proper.

28. Additionally, it is further requested that pending the hearing of this motion (before the Justice be Assigned), the Clerk of this Court, upon payment of the proper fees, is hereby respectfully requested to assign an index number to this proceeding, and to accept for filing a Request for Judicial Intervention (“RJ”), bearing the following caption, namely:



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JANE DOE,

Plaintiff,

-against-

ANONYMOUS INC., and JOHN DOE, individually  
and in his official capacity,

Defendants.  
-----X

29. Additionally, it is respectfully requested that the Clerk of the Court is directed to restrict access to the entire file under the above caption and index number to the parties, their respective counsel and authorized court personnel.

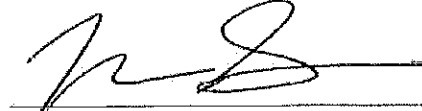
30. No previous application for the relief requested herein has been made.

**WHEREFORE**, it is respectfully requested that an Order be entered: that the pleadings, papers, affidavits, exhibits, and evidence filed with this Court in the above-titled matter, the judgements, orders and decision of this Court in the above-entitled matter; and the transcripts of hearing held in the above-captioned matter be SEALED; and That any of the aforesaid pleadings, papers, affidavits, exhibits, evidence, judgments, orders, decisions and transcripts of hearings filed with this Court in this action be kept in the custody of the Clerk of this County or the County Clerk of this County or the County Clerk at the County Courthouse for the County of New York; and That the Clerk of this Court and the County Clerk not permit any person than a party or his or her counsel to appear herein to copy, examine, or peruse the aforesaid pleadings, papers, affirmations, exhibits, evidence, judgments, orders, decisions, and transcripts of hearings; and That the County Clerk enter the caption of the above-entitled proceeding in the current minute books and indices of actions and proceedings maintained in his office under the title of JANE DOE v.

ANONYMOUS INC., et al.; and Granting such other, further and sufficient relief as the Court  
deems just and proper.

Dated: October 16, 2018  
New York, New York

MARK DAVID SHIRIAN P.C.

A handwritten signature in black ink, appearing to read 'M. Shirian', written over a horizontal line.

By: Mark D. Shirian  
Attorneys for Plaintiff  
JANE DOE

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JANE DOE,

Plaintiff,

-against-

ANONYMOUS INC., and JOHN DOE,  
individually and in his official capacity,

Defendants.  
-----X

**SUMMONS WITH NOTICE**

Index No.:

Date Purchased:

Plaintiff designates New York  
County as the place of trial.

The basis of venue is  
Plaintiff's Residence

**To the Persons Named as Defendants Above:**

**PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED** to appear in this action by serving a notice of appearance on the Plaintiff's attorney at the address set forth below within 20 days after the service of this Summons (not counting the day of service itself), or within 30 days after completion of service where service is complete if the summons is not delivered personally to you within the State of New York.

**YOU ARE HEREBY NOTIFIED THAT** should you fail to answer or appear a judgment will be entered against you by default for the relief demanded below.

Dated: New York, New York  
October 16, 2018



**MARK DAVID SHIRIAN P.C.**

**By: Mark D. Shirian, Esq.**

Attorneys for Plaintiff

**JANE DOE**

228 East 45<sup>th</sup> Street, Suite 1700B

New York, New York 10017

(516) 417-0201

ANONYMOUS INC., *Via Counsel for Defendant*, Costangy Brooks, Smith & Prophete LLP, 620 Eighth Avenue, 38<sup>th</sup> Floor, New York, NY 10018

JOHN DOE, *Via Counsel for Defendant*, Costangy Brooks, Smith & Prophete LLP, 620 Eighth Avenue, 38<sup>th</sup> Floor, New York, NY 10018

**Notice:** The nature of this action is: Quid pro quo sexual harassment, hostile work environment, retaliation, and wrongful termination under N.Y.C. Admin. Code § 8-107 *et al.*

The relief sought is compensatory and non-compensatory damages in excess of the monetary jurisdiction of all lower courts for the Plaintiff, an individual residing in New York County, City and State of New York.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

Index No.:

JANE DOE,

Plaintiff,

-against-

ANONYMOUS INC., and JOHN DOE, individually  
and in his official capacity,

Defendants.

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***Order to Show Cause***

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**MARK DAVID SHIRIAN P.C.**  
Attorneys for Plaintiff – JANE DOE  
Office & P.O. Address  
228 East 45<sup>th</sup> Street, Suite 1700B  
New York, New York 10017  
(516) 417-0201

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TO:

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Service of a copy of the within is hereby admitted.  
Dated: \_\_\_\_\_

Attorney(s) for

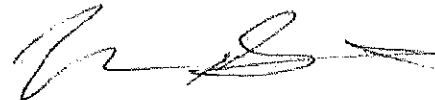
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**CERTIFICATION**

I hereby certify that, to the best of my knowledge, information and belief, the presentation of *Order to Show Cause* and the contentions therein are not frivolous as defined in Subsection (c) of Section 130-1.1 of the Rules of the Chief Administrator (22NYCRR).

Dated: October 16, 2018  
New York, New York



Mark D. Shirian  
MARK DAVID SHIRIAN P.C.  
Attorneys for Plaintiff  
As Designated Above